

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

Tracking Number: I-25-055

Re: Request for Investigation against the Human Resources Division regarding eligibility to take a promotional examination

RESPONSE TO REQUEST FOR INVESTIGATION

Petitioners' Request and Commission's Initial Response

On February 26, 2025, the Petitioner, Brian Hartman, filed a request for the Civil Service Commission (Commission) to investigate, pursuant to Section 2(a) of Chapter 31, a decision of the Human Resources Division (HRD) that the Petitioner was ineligible to take the April 2025 Fire Captain Examination because he did not meet the conditions for eligibility to take the examination. The Commission held a show cause remote videoconference to determine whether the Commission should open an investigation or take any other action relative to the Petitioner's request. As a result of the show cause conference and other information provided by the Petitioner and HRD, I find that the following facts are not disputed:

1. The Petitioner is a Fire Lieutenant with the City of Revere Fire Department (RFD).
2. The Petitioner was appointed to the position of permanent Fire Lieutenant on August 4, 2024 from an eligible list on which his name was certified as of December 6, 2023.
3. Prior to his permanent appointment, the Petitioner did not serve as a full-time temporary or provisional Fire Lieutenant.
4. In October 2024, in anticipation of a future Fire Captain promotional examination to be conducted by HRD in 2025, the Petitioner contacted HRD to inquire about his eligibility to take such a future promotional examination.
5. HRD informed the Petitioner that it did appear that he would meet the eligibility requirements to take the next Fire Captain examination, as he currently served in the "next lower title" (Fire Lieutenant) and his name would have appeared on a certification for Lieutenant for at least one year prior to the next examination.
6. HRD's response was based on the established law in effect at the time and relied on a pre-existing judicial construction of Section 59 of Chapter 31 to the effect that a candidate gained eligibility to take a promotional examination for a position in the fire or police service who held a permanent appointment in the next lower title and whose name had appeared on a certification for such lower title for at least one year prior to the date of the examination.

7. On November 14, 2024, the General Court enacted legislation (denominated chapter 238 of the Acts of 2024) that subsequently was signed by the Governor on November 20, 2024 with an emergency preamble that provided that all provisions of the new law, unless expressly deferred, would take effect immediately.
8. Among the provisions of chapter 238 of the Acts of 2004 that took effect on November 20, 2024 is Section 146 which provided:

Said section 59 of said chapter 31, as so appearing, is hereby further amended by striking out, in line 18, the words “one year after certification” and inserting in place thereof the following words:- 1 year after appointment and performance of the job duties.
9. The effect of this amendment to Section 59 of Chapter 31, as set forth in Section 146 of Chapter 238 of the Acts of 2024, was to change the requirements for eligibility to take fire and police promotional examinations so that, rather than providing that a candidate’s name must have appeared on a certification for promotion to the next lower title for at least one year prior to the promotional examination, the candidate must have actually been appointed to *and performed* the job duties of the next lower title for at least one year prior to the date of the examination.
10. On November 26, 2024 (six days after Section 146 went into effect), HRD posted a promotional examination notice for the statewide Fire Captain examination to be held on April 12, 2025. The examination posting included, among other things, the following statement regarding eligibility:

To be eligible for this examination you must: (1) be an employee in the fire department for which the examination is given with permanent civil service status in the specified eligible title(s) by the date of the examination; and (2) have served in the force at least one year since you were appointed and performed the job duties of the eligible title(s)*. A combination of temporary and permanent service from a certification can be applied towards meeting this one-year requirement. Time spent working in the title of Fire Captain will not interrupt the service period in your permanent position.
11. Based on the statement that HRD provided to the Petitioner in October 2024, he had taken steps to begin to study for the 2025 Fire Captain promotional examination.
12. On January 30, 2025, believing he was eligible to take 2025 Fire Captain promotional examination, the Petitioner duly registered for the examination.
13. On February 26, 2025, HRD informed the Petitioner that he was not eligible to take the April 12, 2025 Fire Captain examination because “after a review of the eligibility list provided and confirmed by your department [it was determined that your] permanent appointment date of 8/4/24 without additional temporary promotion time does not meet the 1 year eligibility requirement per the exam poster.”
14. According to HRD, 397 applicants are expected to take the 2025 Fire Captain promotional examination, 82 from the City of Boston and 315 other applicants statewide.

15. HRD has received no other requests to waive the new eligibility requirements.
16. At the Show Cause Conference on March 10, 2024, HRD counsel represented that he was not aware of any other persons similarly situated to the Petitioner. HRD's pre-hearing memorandum stated:

As HRD has uniformly applied the criteria communicated in the examination poster to all applicants, and has received no information to indicate that the Petitioner satisfied those criteria, the Petitioner has not satisfied the eligibility requirements established in Section 59, and the matter should be dismissed.

17. In response to the Commission's Interim Order for clarification of HRD's prehearing statements, on April 2, 2025, HRD counsel stated:

1. I can confirm that all of the 397 candidates scheduled to take the April 12, 2024 Fire Captain examination were given the same eligibility review based on the information submitted by them and/or their respective appointing authorities and, as a result of that review, HRD determined that each of those 397 applicants satisfied the post-November 20, 2024 eligibility criteria set forth in Section 59, as amended.
2. There were two applicants for the April 12, 2025 Fire Captain exam that where [sic] informed that they were not eligible to take the exam as they did not satisfy the post-November 20, 2024 eligibility criteria set forth in Section 59, as amended. Of these two applicants who were not eligible, one of them is the Petitioner, Brian Hartman, and the other is an applicant from the City of Boston.

Commission's Authority to Conduct Investigations

The Civil Service Commission, established pursuant to G.L. c. 7, § 4I, is an independent, neutral appellate tribunal and investigative entity. Section 2(a) of Chapter 31 grants the Commission broad discretion upon receipt of an alleged violation of the civil service law's provisions to decide whether and to what extent an investigation might be appropriate.

Further, Section 72 of Chapter 31 provides for the Commission to "investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services."

The Commission exercises its discretion to investigate only "sparingly," typically only when there is clear and convincing evidence of systemic violations of Chapter 31 or an entrenched political or personal bias that can be rectified through the Commission's affirmative remedial intervention.

Commission's Response

The Petitioner's request does not fit within the scope of the type of violation of civil service law that would typically invite the Commission's scrutiny. Here, rather than seeking to remedy a violation of civil service law, the Petitioner asks the Commission to grant him an exception to the

express terms of the civil service law that now apply to the eligibility of all candidates who seek to take a fire or police promotional examination. The Commission's equitable powers do not extend to making exceptions to lawfully enacted provisions of civil service law.

I do not underestimate the substantial, good faith effort the Petitioner has put into his advocacy for his request and into his studying for the Fire Captain examination. The Commission must apply the law as written and, in the absence of any basis to find that the Petitioner's civil service rights have been unfairly prejudiced by a gross misrepresentation or other abuse of discretion on the part of HRD, which I am unable to find here, the Commission may not unilaterally override a legislative act. In retrospect, a deferred effective date for the change in eligibility might have been advisable. However, that was a judgment call for legislators and a request for exceptional relief now lies within the purview of the Legislature, which has the sole authority, by general legislation or special acts, to correct or change the law.

Accordingly, the Petitioner's request for investigation into the eligibility requirements for the 2025 Fire Captain examination shall be closed without further action.

Civil Service Commission

/s/Paul M Stein

Paul M. Stein
Commissioner

On April 3, 2025, the Commission (Bowman, Chair; Dooley, McConney and Stein, Commissioners [Markey – Absent]) voted to close the Petitioner's request for investigation without further action.

Notice:

Brian Hartman (Petitioner)

Michael J. Owens, Esq. (HRD)